

By: Ellis

S.B. No. 277

A BILL TO BE ENTITLED

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

AN ACT

relating to the continuation and functions of the Texas Board of Professional Engineers and to the regulation of the practice of engineering.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 1001.005 and 1001.051, Occupations Code, are amended to read as follows:

Sec. 1001.005. APPLICATION OF SUNSET ACT. The Texas Board of Professional Engineers is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2015 [~~2003~~].

Sec. 1001.051. LIMITATION ON EXEMPTION. An exemption under this subchapter applies only to a person who does not offer [~~is not directly or indirectly represented~~] to the public to perform [~~be legally qualified to engage in the practice of~~] engineering services.

SECTION 2. Section 1001.057, Occupations Code, is amended to read as follows:

Sec. 1001.057. EMPLOYEE OF PRIVATE CORPORATION OR BUSINESS ENTITY [~~OR AFFILIATE~~]. (a) This chapter shall not be construed to apply to the activities of a private corporation or other business entity, or the activities of the full-time employees or other personnel under the direct supervision and control of the business

1 entity, on or in connection with [~~A regular full-time employee of a~~  
2 ~~private business entity is exempt from the licensing requirements~~  
3 ~~of this chapter if~~]:

4 (1) reasonable modifications to existing buildings,  
5 facilities, or other fixtures to real property not accessible to  
6 the general public and which are owned, leased, or otherwise  
7 occupied by the entity [~~the employee performs services exclusively~~  
8 ~~for the business entity or an affiliate of that entity~~]; or

9 (2) activities related only to the research,  
10 development, design, fabrication, production, assembly,  
11 integration, or service of products manufactured by the entity [~~the~~  
12 ~~employee's services~~]:

13 [~~(A) are on or in connection with property~~]:

14 [~~(i) owned or leased by the business entity~~  
15 ~~or affiliate, or~~

16 [~~(ii) in which the business entity or~~  
17 ~~affiliate has an interest, estate, or possessory right, or~~

18 [~~(B) affect exclusively the property, products,~~  
19 ~~or interests of the business entity or affiliate, and~~

20 [~~(3) the employee does not have the final authority to~~  
21 ~~approve, or the ultimate responsibility for, engineering designs,~~  
22 ~~plans, or specifications relating to the property or products that~~  
23 ~~are to be~~]:

24 [~~(A) incorporated into a fixed work, system, or~~  
25 ~~facility on the property of another, or~~

26 [~~(B) made available to the public~~].

27 (b) [~~This exemption includes the use of a job title or~~

1 ~~personnel classification by the employee if the employee does not~~  
2 ~~use:~~

3 ~~(1) the title or classification in connection with an~~  
4 ~~offer to the public to perform engineering services; and~~

5 ~~(2) a name, title, or word that tends to convey the~~  
6 ~~impression that a person not licensed under this chapter is~~  
7 ~~offering to the public to perform engineering services.~~

8 ~~[(c)]~~ A person who claims an exemption under this section  
9 and who is determined to have directly or indirectly represented  
10 the person as legally qualified to engage in the practice of  
11 engineering or who is determined to have violated Section 1001.301  
12 may not claim an exemption until the 10th anniversary of the date  
13 the person made that representation.

14 (c) This exemption does not prohibit:

15 (1) a licensed professional engineer who intends to  
16 incorporate manufactured products into a fixed work, system, or  
17 facility that is being designed by the licensee on public property  
18 or the property of others from requiring the manufacturer to have  
19 plans or specifications signed and sealed by a licensed  
20 professional engineer; or

21 (2) the board from requiring, by rule, that certain  
22 manufactured products delivered to or used by the public must be  
23 designed and sealed by a licensed professional engineer, if  
24 necessary to protect the public health, safety, and welfare.

25 (d) For purposes of this section, "products manufactured by  
26 the entity" also includes computer software, firmware, hardware,  
27 semiconductor devices, and the production, exploration, and

1 transportation of oil and gas and related products.

2 SECTION 3. Subsections (b) and (c), Section 1001.058,  
3 Occupations Code, are amended to read as follows:

4 (b) [~~This exemption includes the use of a job title or~~  
5 ~~personnel classification by the employee if the employee does not~~  
6 ~~use:~~

7 [~~(1) the title or classification in connection with an~~  
8 ~~offer to the public to perform engineering services; and~~

9 [~~(2) a name, title, or word that tends to convey the~~  
10 ~~impression that a person not licensed under this chapter is~~  
11 ~~offering to the public to perform engineering services.~~

12 [~~(c)~~] A person who claims an exemption under this section  
13 and who is determined to have directly or indirectly represented  
14 the person as legally qualified to engage in the practice of  
15 engineering or who is determined to have violated Section 1001.301  
16 may not claim an exemption until the 10th anniversary of the date  
17 the person made that representation.

18 SECTION 4. Subsection (b), Section 1001.101, Occupations  
19 Code, is amended to read as follows:

20 (b) Appointments to the board shall be made without regard  
21 to the race, color, disability [~~creed~~], sex, religion, age, or  
22 national origin of the appointee.

23 SECTION 5. Subsection (a), Section 1001.102, Occupations  
24 Code, is amended to read as follows:

25 (a) A person may not be [~~is not eligible for appointment as~~]  
26 a public member of the board if the person or the person's spouse:

27 (1) is registered, certified, or licensed by a a [~~an~~

1 ~~occupational~~] regulatory agency in the field of engineering;

2 (2) is employed by or participates in the management  
3 of a ~~[an agency or]~~ business entity or other organization regulated  
4 by or receiving money from the board ~~[related to the field of~~  
5 ~~engineering];~~ ~~[or]~~

6 (3) owns or controls, directly or indirectly, more  
7 than a 10 percent ~~[has a financial]~~ interest ~~[other than as a~~  
8 ~~consumer]~~ in a business entity or other organization regulated by  
9 or receiving money from the board; or

10 (4) uses or receives a substantial amount of tangible  
11 goods, services, or money from the board other than compensation or  
12 reimbursement authorized by law for board membership, attendance,  
13 or expenses ~~[related to the field of engineering].~~

14 SECTION 6. Section 1001.103, Occupations Code, is amended  
15 to read as follows:

16 Sec. 1001.103. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.

17 (a) In this section, "Texas trade association" means a cooperative  
18 and voluntarily joined statewide association of business or  
19 professional competitors in this state designed to assist its  
20 members and its industry or profession in dealing with mutual  
21 business or professional problems and in promoting their common  
22 interest.

23 (a-1) A person may not be a [A] member ~~[or employee]~~ of the  
24 board and may not be a board employee employed in a "bona fide  
25 executive, administrative, or professional capacity," as that  
26 phrase is used for purposes of establishing an exemption to the  
27 overtime provisions of the federal Fair Labor Standards Act of 1938

1 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

2 (1) the person is an officer, employee, or paid  
3 consultant of a Texas trade association in the field of engineering  
4 ~~[industry]~~; or

5 (2) the person's spouse ~~[related within the second~~  
6 ~~degree by affinity or consanguinity, as determined under Chapter~~  
7 ~~573, Government Code, to a person who]~~ is an officer, manager  
8 ~~[employee]~~, or paid consultant of a Texas trade association in the  
9 field of engineering ~~[industry]~~.

10 (b) A person may not be ~~[serve as]~~ a member of the board or  
11 act as the general counsel to the board if the person is required to  
12 register as a lobbyist under Chapter 305, Government Code, because  
13 of the person's activities for compensation on behalf of a  
14 profession related to the operation of the board.

15 SECTION 7. Section 1001.106, Occupations Code, is amended  
16 by amending Subsection (a) and adding Subsection (c) to read as  
17 follows:

18 (a) It is a ground for removal from the board that a member:

19 (1) does not have at the time of taking office  
20 ~~[appointment]~~ the qualifications required by Sections 1001.101 and  
21 ~~[Section]~~ 1001.102;

22 (2) does not maintain during service on the board the  
23 qualifications required by Sections 1001.101 and ~~[Section]~~  
24 1001.102;

25 (3) is ineligible for membership under Section  
26 1001.102 or ~~[violates a prohibition established by Section]~~  
27 1001.103; ~~[or]~~

1           (4) cannot, because of illness or disability,  
2 discharge the member's duties for a substantial part of the member's  
3 term; or

4           (5) is absent from more than half of the regularly  
5 scheduled board meetings that the member is eligible to attend  
6 during [held in] a calendar year without an excuse approved by a  
7 majority vote of the board[~~, excluding meetings held while the~~  
8 person was not a member].

9           (c) If the executive director has knowledge that a potential  
10 ground for removal exists, the executive director shall notify the  
11 presiding officer of the board of the potential ground. The  
12 presiding officer shall then notify the governor and the attorney  
13 general that a potential ground for removal exists. If the  
14 potential ground for removal involves the presiding officer, the  
15 executive director shall notify the next highest ranking officer of  
16 the board, who shall then notify the governor and the attorney  
17 general that a potential ground for removal exists.

18           SECTION 8. Section 1001.108, Occupations Code, is amended  
19 to read as follows:

20           Sec. 1001.108. OFFICERS. The governor shall designate a  
21 member of the board as the presiding officer of the board to serve  
22 in that capacity at the will of the governor. The board shall elect  
23 annually from its members [~~a presiding officer,~~] an assistant  
24 presiding officer[~~,~~] and a secretary.

25           SECTION 9. Subchapter C, Chapter 1001, Occupations Code, is  
26 amended by adding Section 1001.112 to read as follows:

27           Sec. 1001.112. TRAINING. (a) A person who is appointed to

1 and qualifies for office as a member of the board may not vote,  
2 deliberate, or be counted as a member in attendance at a meeting of  
3 the board until the person completes a training program that  
4 complies with this section.

5 (b) The training program must provide the person with  
6 information regarding:

7 (1) this chapter;

8 (2) the programs operated by the board;

9 (3) the role and functions of the board;

10 (4) the rules of the board, with an emphasis on the  
11 rules that relate to disciplinary and investigatory authority;

12 (5) the current budget for the board;

13 (6) the results of the most recent formal audit of the  
14 board;

15 (7) the requirements of:

16 (A) the open meetings law, Chapter 551,  
17 Government Code;

18 (B) the public information law, Chapter 552,  
19 Government Code;

20 (C) the administrative procedure law, Chapter  
21 2001, Government Code; and

22 (D) other laws relating to public officials,  
23 including conflict-of-interest laws; and

24 (8) any applicable ethics policies adopted by the  
25 board or the Texas Ethics Commission.

26 (c) A person appointed to the board is entitled to  
27 reimbursement, as provided by the General Appropriations Act, for

1 the travel expenses incurred in attending the training program  
2 regardless of whether the attendance at the program occurs before  
3 or after the person qualifies for office.

4 SECTION 10. Subchapter D, Chapter 1001, Occupations Code,  
5 is amended by adding Sections 1001.153 through 1001.156 to read as  
6 follows:

7 Sec. 1001.153. DIVISION OF RESPONSIBILITIES. The board  
8 shall develop and implement policies that clearly separate the  
9 policy-making responsibilities of the board and the management  
10 responsibilities of the executive director and the staff of the  
11 board.

12 Sec. 1001.154. QUALIFICATIONS AND STANDARDS OF CONDUCT  
13 INFORMATION. The executive director or the executive director's  
14 designee shall provide to members of the board and to board  
15 employees, as often as necessary, information regarding the  
16 requirements for office or employment under this chapter, including  
17 information regarding a person's responsibilities under applicable  
18 laws relating to standards of conduct for state officers or  
19 employees.

20 Sec. 1001.155. EQUAL EMPLOYMENT OPPORTUNITY POLICY;  
21 REPORT. (a) The executive director or the executive director's  
22 designee shall prepare and maintain a written policy statement that  
23 implements a program of equal employment opportunity to ensure that  
24 all personnel decisions are made without regard to race, color,  
25 disability, sex, religion, age, or national origin.

26 (b) The policy statement must include:

27 (1) personnel policies, including policies relating

1 to recruitment, evaluation, selection, training, and promotion of  
2 personnel, that show the intent of the board to avoid the unlawful  
3 employment practices described by Chapter 21, Labor Code; and

4 (2) an analysis of the extent to which the composition  
5 of the board's personnel is in accordance with state and federal law  
6 and a description of reasonable methods to achieve compliance with  
7 state and federal law.

8 (c) The policy statement must:

9 (1) be updated annually;

10 (2) be reviewed by the Commission on Human Rights for  
11 compliance with Subsection (b)(1); and

12 (3) be filed with the governor's office.

13 Sec. 1001.156. INFORMATION ON STATE EMPLOYEE INCENTIVE  
14 PROGRAM. The executive director or the executive director's  
15 designee shall provide to board employees information and training  
16 on the benefits and methods of participation in the state employee  
17 incentive program under Subchapter B, Chapter 2108, Government  
18 Code.

19 SECTION 11. Section 1001.203, Occupations Code, is amended  
20 to read as follows:

21 Sec. 1001.203. RULES RESTRICTING ADVERTISING OR  
22 COMPETITIVE BIDDING. (a) The board by rule shall prescribe  
23 standards for compliance with Subchapter A, Chapter 2254,  
24 Government Code [~~may restrict competitive bidding~~].

25 (b) Except as provided by Subsection (a), the [The] board  
26 may not adopt rules [~~a rule~~] restricting advertising or competitive  
27 bidding by a license holder [~~person licensed under this chapter~~]

1 except to prohibit false, misleading, or deceptive practices [~~by~~  
2 ~~the person~~].

3 (c) In its rules to prohibit false, misleading, or deceptive  
4 practices, the [The] board may not include [~~in its rules to prohibit~~  
5 ~~false, misleading, or deceptive practices~~] a rule that:

6 (1) restricts the [~~person's~~] use of any medium for  
7 advertising;

8 (2) restricts the use of a license holder's [~~person's~~]  
9 personal appearance or [~~use of the person's~~] voice in an  
10 advertisement;

11 (3) relates to the size or duration of an  
12 advertisement by the license holder [~~person~~]; or

13 (4) restricts the license holder's [~~person's~~]  
14 advertisement under a trade name.

15 SECTION 12. Subchapter E, Chapter 1001, Occupations Code,  
16 is amended by adding Section 1001.2035 to read as follows:

17 Sec. 1001.2035. RULES ON CONSEQUENCES OF CRIMINAL  
18 CONVICTION. The board shall adopt rules and guidelines as  
19 necessary to comply with Chapter 53.

20 SECTION 13. Subsection (a), Section 1001.204, Occupations  
21 Code, is amended to read as follows:

22 (a) The board shall establish the following [~~reasonable and~~  
23 ~~necessary~~] fees in amounts reasonable and necessary to cover the  
24 costs of administering [~~for the administration of~~] this chapter [~~in~~  
25 ~~amounts not to exceed~~]:

26 (1) license fee; [~~..... \$50~~]

27 (2) annual renewal fee; [~~..... \$75~~]

- 1           (3) reciprocal license fee; [~~.....\$50~~]
- 2           (4) duplicate license fee; [~~.....\$5~~]
- 3           (5) engineer-in-training certificate fee; [~~.....\$15~~]
- 4           (6) roster of engineers fee; [~~.....\$10~~]
- 5           (7) examination fee; and [~~.....\$200~~]
- 6           (8) registration fee for engineering firm. [~~.....\$100~~]

7           SECTION 14. Section 1001.210, Occupations Code, is amended  
8 to read as follows:

9           Sec. 1001.210. CONTINUING EDUCATION PROGRAMS. (a) The  
10 board shall [~~may~~] recognize, prepare, or administer continuing  
11 education programs for its license holders. A license holder must  
12 participate in the programs to the extent required by the board to  
13 keep the person's license.

14           (b) The board may not require a license holder to obtain  
15 more than 15 hours of continuing education annually. The board  
16 shall permit a license holder to certify at the time the license is  
17 renewed that the license holder has complied with the board's  
18 continuing education requirements.

19           (c) The board shall permit a license holder to receive  
20 continuing education credit for educational, technical, ethical,  
21 or professional management activities related to the practice of  
22 engineering, including:

- 23           (1) successfully completing or auditing a course  
24 sponsored by an institution of higher education;
- 25           (2) successfully completing a course certified by a  
26 professional or trade organization;
- 27           (3) attending a seminar, tutorial, short course,

1 correspondence course, videotaped course, or televised course;

2 (4) participating in an in-house course sponsored by a  
3 corporation or other business entity;

4 (5) teaching a course described by Subdivisions  
5 (1)-(4);

6 (6) publishing an article, paper, or book on the  
7 practice of engineering;

8 (7) making or attending a presentation at a meeting of  
9 a technical or engineering management society or organization or  
10 writing a paper presented at such a meeting;

11 (8) participating in the activities of a professional  
12 society or association, including serving on a committee of the  
13 organization; and

14 (9) engaging in self-directed study.

15 (d) A license holder may not receive more than five  
16 continuing education credit hours annually for engaging in  
17 self-directed study [~~persons regulated by the board under this~~  
18 ~~chapter. Participation in the programs is voluntary~~].

19 SECTION 15. Subchapter E, Chapter 1001, Occupations Code,  
20 is amended by adding Sections 1001.214, 1001.215, and 1001.216 to  
21 read as follows:

22 Sec. 1001.214. TECHNOLOGY POLICY. The board shall develop  
23 and implement a policy requiring the executive director and board  
24 employees to research and propose appropriate technological  
25 solutions to improve the board's ability to perform its functions.  
26 The technological solutions must:

27 (1) ensure that the public is able to find information

1 about the board on the Internet;

2 (2) ensure that persons who want to use the board's  
3 services are able to:

4 (A) interact with the board through the Internet;  
5 and

6 (B) access any service that can be provided  
7 effectively through the Internet; and

8 (3) be cost-effective and developed through the  
9 board's planning processes.

10 Sec. 1001.215. NEGOTIATED RULEMAKING AND ALTERNATIVE  
11 DISPUTE RESOLUTION POLICY. (a) The board shall develop and  
12 implement a policy to encourage the use of:

13 (1) negotiated rulemaking procedures under Chapter  
14 2008, Government Code, for the adoption of board rules; and

15 (2) appropriate alternative dispute resolution  
16 procedures under Chapter 2009, Government Code, to assist in the  
17 resolution of internal and external disputes under the board's  
18 jurisdiction.

19 (b) The board's procedures relating to alternative dispute  
20 resolution must conform, to the extent possible, to any model  
21 guidelines issued by the State Office of Administrative Hearings  
22 for the use of alternative dispute resolution by state agencies.

23 (c) The board shall designate a trained person to:

24 (1) coordinate the implementation of the policy  
25 adopted under Subsection (a);

26 (2) serve as a resource for any training needed to  
27 implement the procedures for negotiated rulemaking or alternative

1 dispute resolution; and

2 (3) collect data concerning the effectiveness of those  
3 procedures, as implemented by the board.

4 Sec. 1001.216. JOINT ADVISORY COMMITTEE ON THE PRACTICE OF  
5 ENGINEERING AND ARCHITECTURE. (a) The Joint Advisory Committee on  
6 the Practice of Engineering and Architecture is an advisory  
7 committee to the board and to the Texas Board of Architectural  
8 Examiners. The advisory committee consists of:

9 (1) three members of the board appointed by the board;  
10 and

11 (2) three members of the Texas Board of Architectural  
12 Examiners appointed by that board.

13 (b) Members of the advisory committee serve staggered  
14 six-year terms with the terms of one member appointed by the board  
15 and one member appointed by the Texas Board of Architectural  
16 Examiners expiring each odd-numbered year.

17 (c) The advisory committee shall meet at least twice a year.

18 (d) The advisory committee shall work to resolve issues that  
19 result from the overlap between activities that constitute the  
20 practice of engineering and those that constitute the practice of  
21 architecture. The advisory committee shall assist each agency in  
22 protecting the public rather than advancing the interests of either  
23 agency or the profession it regulates.

24 (e) The advisory committee shall issue advisory opinions to  
25 the board and to the Texas Board of Architectural Examiners on  
26 matters relating to the practice of engineering and the practice of  
27 architecture, including:

1           (1) opinions on whether certain activities constitute  
2 the practice of engineering or the practice of architecture;

3           (2) specific disciplinary proceedings initiated by  
4 either agency; and

5           (3) the need for persons working on particular  
6 projects to be licensed by the board or registered by the Texas  
7 Board of Architectural Examiners.

8           (f) If the advisory committee issues an advisory opinion to  
9 the board or the Texas Board of Architectural Examiners on a matter,  
10 that agency shall notify the committee of the final action taken  
11 with regard to the matter. The advisory committee shall consider  
12 the action taken by the agency on the matter in any advisory opinion  
13 subsequently issued by the committee on a related matter.

14           (g) The board and the Texas Board of Architectural Examiners  
15 shall enter into a memorandum of understanding regarding the  
16 advisory committee that includes the composition and purpose of the  
17 committee.

18           SECTION 16. Section 1001.251, Occupations Code, is amended  
19 by adding Subsection (c) to read as follows:

20           (c) The board shall maintain on the board's Internet  
21 website:

22           (1) information regarding the procedure for filing a  
23 complaint with the board; and

24           (2) a form that a person may use to file a complaint  
25 with the board.

26           SECTION 17. Sections 1001.252 and 1001.253, Occupations  
27 Code, are amended to read as follows:

1           Sec. 1001.252. GENERAL RULES REGARDING COMPLAINT  
2 INVESTIGATION AND DISPOSITION [~~COMPLAINTS~~]. (a) The board shall  
3 adopt rules that permit the board to receive and investigate a  
4 confidential complaint against a license holder or other person who  
5 may have violated this chapter. The board shall maintain the  
6 confidentiality of the complaint during the investigation.

7           (b) The board by rule shall specify:

8                   (1) the manner by which a person may contact the board  
9 for assistance in filing a complaint;

10                   (2) the place at which a complaint must be filed;

11                   (3) the proper form of a complaint; and

12                   (4) the information that must be included in a  
13 complaint.

14           (c) The board's procedures must permit a member of the  
15 public who desires to file a complaint to:

16                   (1) speak to an investigator on the staff of the board  
17 if the person desires to do so; or

18                   (2) easily and conveniently access the board's  
19 complaint process without being required to speak to an  
20 investigator on the staff of the board if the person does not desire  
21 to speak to an investigator.

22           (d) The board shall consider any written grievance against a  
23 license holder or other person filed with the board as a complaint.

24           (e) A complaint must include information sufficient for the  
25 board to determine whether it has the authority to resolve the  
26 complaint. A complaint that contains sufficient information for  
27 the board to commence an investigation is not required to include

1 all of the information necessary for the board to determine the  
2 validity of the complaint.

3 (f) On receipt of a complaint, the board shall determine  
4 whether the board has the authority to resolve the complaint. If  
5 the board does not have the authority to resolve the complaint, the  
6 board shall dismiss the complaint. If the board has the authority  
7 to resolve the complaint, the board shall initiate a disciplinary  
8 proceeding against the person who is the subject of the complaint.

9 (g) The board by rule shall prescribe a method for  
10 prioritizing complaints for purposes of complaint investigation.  
11 In establishing priorities:

12 (1) a complaint that alleges an action that could  
13 potentially harm the public takes precedence over a complaint that  
14 does not allege an action that could potentially harm the public;  
15 and

16 (2) with regard to complaints that do not allege an  
17 action that could potentially harm the public, a complaint filed by  
18 a member of the public takes precedence over a complaint filed by  
19 the staff of the board.

20 (h) The board's staff is responsible for conducting all  
21 phases of complaint investigation, including gathering evidence  
22 necessary to determine the validity of the complaint.

23 (i) The board may employ or contract with advisors,  
24 consultants, engineers, or other persons to provide technical  
25 assistance in investigations and disciplinary proceedings. Except  
26 for an action involving fraud, conspiracy, or malice, a person  
27 whose services are obtained by the board under this subsection is

1 immune from civil liability and may not be subjected to a suit for  
2 damages for any investigation, report, recommendation, statement,  
3 evaluation, finding made, or other action taken in the course of  
4 performing the person's official duties.

5 (j) The board's staff shall regularly report to the board on  
6 each complaint dismissed by board staff, including:

- 7 (1) the name of the complainant;  
8 (2) the name of the person who is the subject of the  
9 complaint;  
10 (3) the basis of the complaint; and  
11 (4) the reason for the dismissal of the complaint.

12 Sec. 1001.253. COMPLAINT INFORMATION. (a) The board  
13 shall:

- 14 (1) assign a number to each complaint filed with the  
15 board; and  
16 (2) ensure that each phase of the processing of a  
17 complaint is appropriately documented.

18 (b) The board shall maintain a [keep an information] file on  
19 [about] each written complaint [relating to a license holder] filed  
20 with the board. The file must include:

- 21 (1) the name of the person who filed the complaint;  
22 (2) the date the complaint is received by the board;  
23 (3) the subject matter of the complaint;  
24 (4) the name of each person contacted in relation to  
25 the complaint;  
26 (5) a summary of the results of the review or  
27 investigation of the complaint; and

1           (6) an explanation of the reason the file was closed,  
2 if the board closed the file without taking action other than to  
3 investigate the complaint.

4           (c) The board shall provide to the person filing the  
5 complaint and to each person who is a subject of the complaint a  
6 copy of the board's policies and procedures relating to complaint  
7 investigation and resolution.

8           (d) The [(b) If a written complaint relating to a license  
9 holder is filed with the board, the] board, at least quarterly and  
10 until final disposition of the complaint, shall notify the parties  
11 to the complaint of the status of the complaint unless the notice  
12 would jeopardize an undercover investigation.

13           SECTION 18. Subchapter F, Chapter 1001, Occupations Code,  
14 is amended by adding Sections 1001.254 and 1001.255 to read as  
15 follows:

16           Sec. 1001.254. STATISTICAL ANALYSIS OF COMPLAINTS.

17 (a) The board shall develop and maintain a complaint tracking  
18 system to monitor the processing of complaints filed with the  
19 board.

20           (b) The board shall include with the board's annual  
21 financial report under Section 2101.011, Government Code, a  
22 statistical analysis of the complaints filed with the board during  
23 the preceding year, including:

24                   (1) the number of complaints filed;

25                   (2) a categorization of complaints filed according to  
26 the basis of the complaint and the number of complaints in each  
27 category;

1           (3) the number of complaints filed by board staff;

2           (4) the number of complaints filed by persons other  
3 than board staff;

4           (5) the average length of time required to resolve a  
5 complaint;

6           (6) the number of complaints resolved and the manner  
7 in which they were resolved, including:

8                   (A) the number of complaints dismissed and the  
9 reasons for dismissal; and

10                   (B) the number of complaints resulting in  
11 disciplinary action, the disciplinary action taken, and whether the  
12 disciplinary action taken was imposed by stipulation, agreed  
13 settlement, consent order, default, or order following a contested  
14 case hearing; and

15           (7) the number of complaints filed that are  
16 unresolved, the number of those complaints filed by board staff,  
17 the number of those complaints filed by persons other than board  
18 staff, and the average length of time that the unresolved  
19 complaints have been on file.

20           Sec. 1001.255. PUBLIC PARTICIPATION. The board shall  
21 develop and implement policies that provide the public with a  
22 reasonable opportunity to appear before the board and to speak on  
23 any issue under the jurisdiction of the board.

24           SECTION 19. Section 1001.301, Occupations Code, is amended  
25 by amending Subsections (b) and (c) and adding Subsections (f) and  
26 (g) to read as follows:

27           (b) Except as provided by Subsection (f), a [A] person may

1 not, unless the person holds a license issued under this chapter,  
2 directly or indirectly use or cause to be used as a professional,  
3 business, or commercial identification, title, name,  
4 representation, claim, asset, or means of advantage or benefit any  
5 of, or a variation or abbreviation of, the following terms:

- 6 (1) "engineer";
- 7 (2) "professional engineer";
- 8 (3) "licensed engineer";
- 9 (4) "registered engineer";
- 10 (5) "registered professional engineer";
- 11 (6) "licensed professional engineer"; or
- 12 (7) "engineered."

13 (c) Except as provided by Subsection (f), a [A] person may  
14 not directly or indirectly use or cause to be used an abbreviation,  
15 word, symbol, slogan, or sign that tends or is likely to create an  
16 impression with the public that the person is qualified or  
17 authorized to engage in the practice of engineering unless the  
18 person holds a license and is practicing under this chapter.

19 (f) Notwithstanding the other provisions of this chapter, a  
20 regular employee of a business entity who is engaged in engineering  
21 activities but is exempt from the licensing requirements of this  
22 chapter under Sections 1001.057 or 1001.058 is not prohibited from  
23 using the term "engineer" on a business card, cover letter, or other  
24 form of correspondence that is made available to the public if the  
25 person does not:

- 26 (1) offer to the public to perform engineering  
27 services; or

1           (2) use the title in any context outside the scope of  
2 the exemption in a manner that represents an ability or willingness  
3 to perform engineering services or make an engineering judgment  
4 requiring a licensed professional engineer.

5           (g) Subsection (f) does not authorize a person to use a term  
6 listed in Subsections (b)(2)-(6) or a variation or abbreviation of  
7 one of those terms.

8           SECTION 20. Section 1001.303, Occupations Code, is amended  
9 to read as follows:

10           Sec. 1001.303. APPLICATION FOR LICENSE. (a) An applicant  
11 for a license under this chapter must submit an [~~a sworn~~]  
12 application on a form prescribed and provided by the board.

13           (b) The application must contain:

14                 (1) personal information about the applicant, as  
15 required by board rule;

16                 (2) a description of the applicant's education;

17                 (3) a detailed summary of the applicant's actual  
18 engineering work;

19                 (4) a description of any engineering license or  
20 registration previously issued to the applicant and any denial,  
21 revocation, or suspension of an engineering license or registration  
22 held by the applicant;

23                 (5) a description of any criminal offense of which the  
24 applicant has been convicted; and

25                 (6) at least three [~~five~~] references from engineers  
26 [~~individuals~~] having personal knowledge of the applicant's  
27 character, reputation, [~~and~~] general suitability for a license, and

1 ~~[of whom at least three must be engineers having personal knowledge~~  
2 ~~of the applicant's]~~ engineering experience.

3 SECTION 21. Section 1001.304, Occupations Code, is amended  
4 by adding Subsection (d) to read as follows:

5 (d) The board by rule shall ensure that the examination is  
6 administered to applicants with disabilities in compliance with the  
7 Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et  
8 seq.), and its subsequent amendments.

9 SECTION 22. Sections 1001.306, 1001.310, and 1001.311,  
10 Occupations Code, are amended to read as follows:

11 Sec. 1001.306. EXAMINATION RESULTS. (a) Not later than  
12 the 30th day after the date a person takes a licensing examination  
13 under this chapter, the ~~[The]~~ board shall notify the person ~~[each~~  
14 ~~examinee]~~ of the results of the ~~[an]~~ examination ~~[not later than the~~  
15 ~~30th day after the date the examination is administered]~~.

16 (a-1) If the ~~[an]~~ examination is graded or reviewed by a  
17 ~~[national]~~ testing service:

18 (1) [7] the board shall notify the person ~~[each~~  
19 ~~examinee]~~ of the results of the examination not later than the 14th  
20 day after the date the board receives the results from the testing  
21 service; and

22 (2) if [7]

23 ~~[(b) If the]~~ notice of the examination results ~~[of an~~  
24 ~~examination]~~ will be delayed for longer than 90 days after the  
25 examination date, the board shall notify the person ~~[each examinee]~~  
26 of the reason for the delay before the 90th day.

27 (b) The board may require a testing service to notify a

1 person of the results of the person's examination.

2 (c) If requested in writing by a person who fails a  
3 licensing [the] examination administered under this chapter, the  
4 board shall furnish [provide to] the person with an analysis of the  
5 person's performance on the examination.

6 Sec. 1001.310. TEMPORARY OR PROVISIONAL LICENSE. (a) The  
7 board by rule may adopt standards and procedures for issuing a  
8 temporary or provisional license under this chapter.

9 (b) The board may issue a provisional license to an  
10 applicant currently licensed in another jurisdiction who seeks a  
11 license in this state and who:

12 (1) has been licensed in good standing as an engineer  
13 for at least two years in another jurisdiction, including a foreign  
14 country, that has licensing requirements substantially equivalent  
15 to the requirements of this chapter;

16 (2) has passed a national or other examination  
17 recognized by the board relating to the practice of engineering;  
18 and

19 (3) is sponsored by a person licensed by the board  
20 under this chapter with whom the provisional license holder will  
21 practice during the time the person holds a provisional license.

22 (c) The board may waive the requirement of Subsection (b)(3)  
23 for an applicant if the board determines that compliance with that  
24 subsection would be a hardship to the applicant.

25 (d) A provisional license is valid until the date the board  
26 approves or denies the provisional license holder's application for  
27 a license. The board shall issue a license under this chapter to

1 the provisional license holder if:

2 (1) the provisional license holder is eligible to be  
3 licensed under Section 1001.311(b); or

4 (2) the provisional license holder meets the following  
5 requirements:

6 (A) the provisional license holder passes an  
7 examination that tests the provisional license holder's knowledge  
8 and understanding of the laws and rules relating to the practice of  
9 engineering in this state;

10 (B) the board verifies that the provisional  
11 license holder meets the academic and experience requirements for a  
12 license under this chapter; and

13 (C) the provisional license holder satisfies any  
14 other licensing requirements under this chapter.

15 (e) The board must approve or deny a provisional license  
16 holder's application for a license not later than the 180th day  
17 after the date the provisional license is issued. The board may  
18 extend the 180-day period if the results of an examination have not  
19 been received by the board before the end of that period.

20 (f) The board may establish a fee for provisional licenses  
21 in an amount reasonable and necessary to cover the cost of issuing  
22 the license.

23 Sec. 1001.311. APPLICATION BY NONRESIDENT. (a) A person  
24 who holds a license or certificate of registration issued by  
25 another state or a foreign country may apply for a license in this  
26 state.

27 (b) The board may waive any prerequisite to obtaining a

1 license for an applicant after reviewing the applicant's  
2 credentials and determining that the applicant holds a license  
3 issued by another jurisdiction that has licensing requirements  
4 substantially equivalent to those of this state.

5 SECTION 23. Subsection (b), Section 1001.351, Occupations  
6 Code, is amended to read as follows:

7 (b) The board by rule may adopt a system under which  
8 licenses and registrations expire on various dates during the year.  
9 For the year in which the license or registration expiration date is  
10 changed, the board shall prorate license or registration fees on a  
11 monthly basis so that each license or registration holder pays only  
12 that portion of the license or registration fee that is allocable to  
13 the number of months during which the license or registration is  
14 valid. On renewal of the license or registration on the new  
15 expiration date, the total license or registration renewal fee is  
16 payable ~~[and shall adjust renewal dates accordingly].~~

17 SECTION 24. Sections 1001.352 and 1001.353, Occupations  
18 Code, are amended to read as follows:

19 Sec. 1001.352. NOTICE OF LICENSE EXPIRATION. Not later  
20 than the 30th day ~~[one month]~~ before the ~~[expiration]~~ date ~~[of]~~ a  
21 person's license is scheduled to expire, the board shall send ~~[mail~~  
22 ~~to the person at the last address the person provided to the board]~~  
23 written notice of the impending ~~[license]~~ expiration to the person  
24 at the person's last known address according to the records of the  
25 board ~~[date and the amount of the annual renewal fee for the~~  
26 ~~license].~~

27 Sec. 1001.353. PROCEDURE FOR RENEWAL. (a) A person who is

1 otherwise eligible to renew a license may renew an unexpired  
2 license by paying the required renewal fee to the board before the  
3 expiration date of the license. A person whose license has expired  
4 may not engage in activities that require a license until the  
5 license has been renewed.

6 (b) A person whose license has been expired for 90 days or  
7 less may renew the license by paying to the board a renewal fee that  
8 is equal to 1-1/2 times the normally ~~[the]~~ required renewal fee ~~[and~~  
9 ~~a penalty fee set by the board]~~.

10 (c) A person whose license has been expired for more than 90  
11 days but less than two years may renew the license by paying to the  
12 board a renewal fee that is equal to two times the normally required  
13 renewal fee ~~[all unpaid renewal fees and a penalty fee set by the~~  
14 ~~board]~~.

15 (d) A person whose license has been expired for two years or  
16 more may not renew the license. The person may obtain a new license  
17 by complying with the requirements and procedures, including the  
18 examination requirements, for obtaining an original license ~~[that~~  
19 ~~are in effect at the time the person applies]~~.

20 SECTION 25. Subchapter H, Chapter 1001, Occupations Code,  
21 is amended by adding Section 1001.354 to read as follows:

22 Sec. 1001.354. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE  
23 PRACTITIONER. (a) A person who was licensed in this state, moved  
24 to another state, and is currently licensed and has been in practice  
25 in the other state for the two years preceding the date of  
26 application may obtain a new license without reexamination.

27 (b) The person must pay to the board a fee that is equal to

1 two times the normally required renewal fee for the license.

2 SECTION 26. Section 1001.405, Occupations Code, is amended  
3 by adding Subsection (g) to read as follows:

4 (g) Notwithstanding the other provisions of this section,  
5 the board by rule may provide that a business entity that has not  
6 previously registered with the board and that is engaged in the  
7 practice of engineering in violation of Subsection (b) is not  
8 subject to disciplinary action for the violation if the business  
9 entity registers with the board not later than the 30th day after  
10 the date the board gives written notice to the business entity of  
11 the registration requirement. This subsection does not apply to a  
12 business entity whose registration has expired.

13 SECTION 27. Section 1001.406, Occupations Code, is amended  
14 to read as follows:

15 Sec. 1001.406. GRADUATE ENGINEERS. (a) A graduate of a  
16 [~~public~~] university recognized by the American Association of  
17 Colleges and Universities who has a degree from an engineering  
18 program accredited by the Accreditation Board for Engineering and  
19 Technology (ABET) has the right to:

20 (1) disclose any college degree received by the  
21 person; and

22 (2) use the term "graduate engineer" on the person's  
23 stationery or business cards or in personal communications of any  
24 character.

25 (b) A graduate engineer who is employed in a firm registered  
26 under this chapter and who is working under the direct supervision  
27 of a licensed professional engineer may use the term "engineer" on

1 the person's stationery or business cards or in personal  
2 communications of any character.

3 SECTION 28. Subchapter J, Chapter 1001, Occupations Code,  
4 is amended by adding Sections 1001.4525, 1001.4526, and 1001.4527  
5 to read as follows:

6 Sec. 1001.4525. PROBATION. (a) If a person's license  
7 suspension is probated, the board may require the person to:

8 (1) report regularly to the board on matters that are  
9 the basis of the probation;

10 (2) limit practice to the areas prescribed by the  
11 board; or

12 (3) continue or review professional education until  
13 the person attains a degree of skill satisfactory to the board in  
14 those areas that are the basis of the probation.

15 (b) The board by rule shall adopt written guidelines to  
16 ensure that probation is administered consistently.

17 Sec. 1001.4526. RESTITUTION. (a) Subject to Subsection  
18 (b), the board may order a person licensed or registered under this  
19 chapter to pay restitution to a consumer as provided in an agreement  
20 resulting from an informal settlement conference instead of or in  
21 addition to imposing an administrative penalty under this chapter.

22 (b) The amount of restitution ordered as provided in an  
23 agreement resulting from an informal settlement conference may not  
24 exceed the amount the consumer paid to the person for a service  
25 regulated by this chapter. The board may not require payment of  
26 other damages or estimate harm in a restitution order.

27 Sec. 1001.4527. RECUSAL OF BOARD MEMBER. (a) A board

1 member who participated in the investigation of a complaint or in  
2 informal settlement negotiations regarding the complaint:

3 (1) may not participate in the discussion of or vote on  
4 the matter at a board meeting related to the complaint; and

5 (2) shall state at the meeting why the member is  
6 prohibited from participating in the discussion of or voting on the  
7 matter.

8 (b) A statement under Subsection (a)(2) shall be entered  
9 into the minutes of the meeting.

10 SECTION 29. (a) Not later than January 1, 2004, the Texas  
11 Board of Professional Engineers shall adopt the rules required by  
12 Section 1001.2035, Occupations Code, as added by this Act.

13 (b) Not later than September 1, 2005, the Texas Board of  
14 Professional Engineers shall adopt the written guidelines required  
15 by Section 1001.4525, Occupations Code, as added by this Act.

16 SECTION 30. (a) This Act takes effect September 1, 2003.

17 (b) The changes in law made by Sections 1001.102 and  
18 1001.103, Occupations Code, as amended by this Act, and Section  
19 1001.112, Occupations Code, as added by this Act, in the  
20 prohibitions on or qualifications of members of the Texas Board of  
21 Professional Engineers do not affect the entitlement of a member  
22 serving on the Texas Board of Professional Engineers immediately  
23 before September 1, 2003, to continue to serve and function as a  
24 member of the Texas Board of Professional Engineers for the  
25 remainder of the member's term. Those changes in law apply only to  
26 a member appointed on or after September 1, 2003.

27 (c) The change in law made by Section 1001.108, Occupations

1 Code, as amended by this Act, does not affect the entitlement of a  
2 person who was serving as presiding officer of the Texas Board of  
3 Professional Engineers immediately before September 1, 2003, to  
4 continue to serve and function in that capacity for the remainder of  
5 the person's term as presiding officer. That change in law applies  
6 only to the designation of a presiding officer of the board after  
7 that person's term as presiding officer expires.

8 (d) The changes in law made by this Act to Chapter 1001,  
9 Occupations Code, relating to the investigation of a complaint  
10 apply only to a complaint filed with the Texas Board of Professional  
11 Engineers on or after the effective date of this Act. A complaint  
12 filed with the board before the effective date of this Act is  
13 governed by the law as it existed immediately before that date, and  
14 the former law is continued in effect for that purpose.